IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4146 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

NARSINH VELJI SIKOTARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4146 of 2002

MRS DT SHAH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 13.2.2002 passed against him by the

District Magistrate, Porbandar, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. Detenu has been branded as "chronic bootlegger".

2. The grounds of detention served on the detenu indicates that the petitioner detenu was involved in four different criminal offences out of which two were under police investigation on the date of order of detention. The case placed before the detaining authority further is that three different witnesses have stated about the dangerous activities of the petitioner and, therefore, detaining authority has recorded subjective satisfaction and decided to detain the detenu.

3. Ld. counsel Mrs. DT Shah appearing for the petitioner that the order of detention is bad on various grounds and while pointing out infirmities, she has mainly concentrated on the point that the order of detention is passed without application of mind which is clear from the perusal of the papers submitted by the sponsoring authority. By referring para-4 of grounds of detention served to the detenu, she has pointed out that it is specifically mentioned in para-4 that detaining authority itself had verified the statements recorded by the police officer and thereafter the same were verified by the Deputy Superintendent of Police. Bunch of papers supplied to the detenu does not contain any copy of the statement and verification recorded by the detaining authority. It is rightly submitted that there are two possibilities viz. (i) detaining authority might not have verified the statements of witnesses and statement made in para-4 of the ground of detention is not correct, and (ii) if really the statements of witnesses recorded by the detaining authority verifying their earlier statements and then copy of such statement of verification is not supplied to the detenu. In any case, the case would fall in the category of the cases where it has been held by this Court as well as Apex Court that the order of detention cannot sustain when detenu is not supplied with all relevant documents on the basis of which subjective satisfaction has been recorded. Ld. counsel appearing for the petitioner has rightly placed reliance on the decision in the case of Jakirbhai Rahimbhai Nagori v/s District Mehsana & Ors., reported 37(1) GLR P. 80, wherein this Court has held that there must be subjective satisfaction of the detaining authority itself that the claim of privilege was justified. In the cited case also, the detenu was a

"chronic bootlegger" according to the detaining authority. In para-2 of the said decision, referring to the decision in the case of Koli Ashwin v/s State of Gujarat in Spl.Criminal Application No. 1812/1993 decided on 12.9.1994, this Court has held that the claim of privilege exercised by the detaining authority under Section 9(2) of the PASA Act also cannot be said to be genuine. In the instant case also, the claim of privilege is found to be not genuine and this infirmity goes to the root of the legality and validity of the order of detention and hence the same requires to be quashed and set aside, on this sole ground alone.

4. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 13.2.2001 passed by the District Magistrate, Porbandar, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

27-6-2002 [C. K.BUCH, J]
*rawal